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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

STATE OF WASHINGTON,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
HEALTH & HUMAN SERVICES,

Defendant.

NO.

COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF

I. JURISDICTION AND VENUE

This action arises under Title XIX of the Social Security Act (hereinafter the Act); section 6036 of the Deficit Reduction Act of 2005 (DRA) (Pub. L. No. 109-171); the Constitution of the United States, specifically Article I, Section 8, and the Fifth and Fourteenth Amendments; and 28 U.S.C. §§ 2201 and 2202. This court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1346. Venue is proper under 28 U.S.C. § 1391(e).

II. PARTIES

1. Plaintiff is the State of Washington and brings this case in its own behalf and as *parens patriae* of its citizens.

1 Defendant, United States Department of Health and Human Services, is an executive
2 branch agency of the United States. Through the Centers for Medicare and Medicaid Services,
3 it is the federal agency responsible for administering the Medicaid program authorized by
4 Title XIX of the Act.
5

6 **III. ALLEGATIONS**

7 1. Plaintiff, through its Department of Social and Health Services, participates in
8 the Medicaid program administered by Defendant. Medicaid is a joint federal-state program
9 under which the Defendant reimburses states for a portion of the costs incurred by Plaintiff in
10 paying for covered medical care services provided to individuals whose income and resources
11 are inadequate to pay for such services themselves. As a condition of receipt of federal
12 financial participation, states are required to comply with congressional acts and with
13 regulations and policy statements promulgated by Defendant. Failure to comply with such
14 direction from Defendant can result in loss of federal financial participation in paying for the
15 costs of medical care provided under the Act.
16

17 2. Generally speaking, federal law limits eligibility for Medicaid to those persons
18 who (1) have income and assets below specified limits and (2) are either (a) citizens of the
19 United States or (b) lawfully admitted for permanent residence for at least five years.
20 However, pursuant to section 1902(v)(2) of the Act (42 U.S.C. § 1396b(v)(2)), persons who do
21 not meet the citizenship or lawful residence test (“non-qualifying aliens”) but who do meet the
22 financial eligibility standards are eligible to receive Medicaid benefits for treatment of certain
23 emergency medical conditions. Covered emergency medical conditions, as defined in section
24 1902(v)(3) of the Act (42 U.S.C. § 1396b(v)(3)), include labor and delivery of babies.
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1 3. Under section 1901(e)(4) of the Act (42 U.S.C. § 1396a(e)(4)), children born to
2 mothers eligible for and receiving Medicaid coverage at delivery are deemed to be themselves
3 eligible for Medicaid beginning at birth and one year thereafter if they are members of their
4 mothers' households and their mothers remain Medicaid eligible. This allows newborns to
5 have access to important primary medical care beginning at birth, rather than having to wait
6 until an application is submitted on their behalf and approved.
7

8 4. Under the Fourteenth Amendment to the Constitution, children born in the
9 United States are citizens of the United States, regardless of the immigration status of their
10 parents.
11

12 5. For several years, Defendant has interpreted section 1901(e)(4) to require that
13 newborn children of non-qualifying aliens who are eligible for Medicaid emergency medical
14 care be deemed eligible for full Medicaid coverage immediately upon birth if the mothers
15 remain eligible for Medicaid emergency care pursuant to section 1902(v)(2) of the Act. This
16 interpretation is reflected in correspondence to states from authorized officers and employees
17 of Defendant, including a letter dated July 20, 1993; a guidance memo dated May 16, 1997;
18 and emails dated July 20 and October 14, 2004. Copies of these documents are attached to this
19 Complaint as Attachments 1-4 respectively.
20

21 6. In 2006, Congress enacted, and the President signed, Pub. L. No. 109-171, the
22 Deficit Reduction Act (DRA). Section 6036 of the DRA added a new requirement that states
23 must require documentary proof of U.S. citizenship before determining that applicants who
24 state that they are citizens are eligible for Medicaid. On July 12, 2006, Defendant published
25 interim final rule amendments implementing section 6036 of the DRA. In the "Background/
26

1 Considerations” statement that accompanied these amendments, Defendant stated its
2 interpretation that the provisions of section 1902(e)(4) providing for automatic deeming of
3 Medicaid eligibility for newborn citizens do not apply to newborn citizens whose mothers are
4 non-qualifying aliens, and stated that such newborn citizens must submit an application and
5 proof of citizenship before being made eligible for medical care coverage through Medicaid.
6 Implementation of this interpretation would result in disparate Medicaid eligibility processes
7 for newborn citizen infants depending on the immigration status of their mothers without either
8 a compelling interest or a rational basis justifying such differential treatment. Such differential
9 treatment would deny newborn citizens of non-qualifying alien mothers the equal protection of
10 the law contrary to the Fifth and Fourteenth Amendments to the Constitution of the United
11 States.
12

13
14 7. Denying automatic deeming of Medicaid eligibility for newborn citizens of non-
15 qualifying alien mothers would result in harm to such children because their access to
16 necessary and appropriate primary medical care would be either delayed until an application
17 could be completed and submitted on their behalf or completely lacking if no such application
18 is filed. Lack of adequate primary medical care during their first year of life results in harm to
19 children, as follows:
20

21 a. Access to primary medical care during the first year of life is critical to
22 children’s growth and development. In the first month of life, they must be monitored to
23 assure that normal growth and development occurs and that metabolic disorders are not
24 present; to determine that they are receiving appropriate nutrition; and to assure that viral or
25 bacterial infections are appropriately recognized and treated. Failure to recognize and treat
26

1 such conditions could result in serious medical conditions that could be life-threatening or
2 result in irreversible injury to their developing brains.

3 b. In addition, standard primary care practice during a child's first year of
4 life involves immunization against diseases that can cause significant long-term damage.
5 Failure to obtain this care could result in long-term consequences to the children in the form of
6 life-threatening disease and long-term and irreversible damage to them.

7
8 c. A significant part of primary care for newborns involves teaching
9 parents and caregivers about the importance of proper nutrition, infection control practices, and
10 monitoring for subtle changes in the children's behaviors or physical conditions that could
11 indicate the presence of infections or other conditions requiring treatment. When parents do
12 not receive such training, the children are at a much higher risk of incurring life-threatening
13 diseases or injuries and suffering irreversible damage as a result.

14
15 8. Failure to provide access to primary medical care during children's first year of
16 life also causes harm to the state as a whole and its taxpayers, as follows:

17 a. Failure to provide primary care to children during their first year of life
18 results in increased costs to the health care system. Parents who monitor their infant children's
19 conditions but have no primary physician are more likely to seek treatment for routine
20 conditions in a hospital emergency room. Such treatment is more expensive and diverts
21 resources that could be used for genuine emergencies, thus increasing the system's overall
22 costs. When parents do not seek appropriate treatment for routine conditions, the children are
23 likely to incur more serious medical conditions that could lead to expensive hospitalizations.
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1 Providing access to primary care can often avoid such expensive treatment and the higher costs
2 necessarily incurred as a result.

3 b. In addition, failure to provide newborns with access to primary care
4 medical treatment results in increased long-term demands on the public social service system,
5 because children who suffer long-term mental or physical injury are less likely to become
6 functioning and productive adults and more likely to require such services as special education
7 and public assistance.
8

9 9. The citizens of the State of Washington who suffer the harms described in
10 paragraphs 7 and 8 of this complaint do not, and will not, have an adequate remedy at law with
11 respect thereto.
12

13 10. Defendant's interpretation of the DRA does not reflect a legitimate condition
14 placed on receipt of federal funds pursuant to Article I, Section 8 of the Constitution because it
15 was not imposed unambiguously by Congress.

16 11. Defendant's interpretation of the DRA does not reflect a legitimate condition
17 placed on receipt of federal funds pursuant to Article I, Section 8 of the Constitution because it
18 requires Plaintiff, in order to receive federal financial participation for providing covered
19 medical care to newborn citizens of non-qualifying alien mothers, to deny such newborn
20 citizens the equal protection of the law contrary to the Fifth and Fourteenth Amendments to the
21 Constitution of the United States.
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IV. RELIEF REQUESTED

A. Declaratory Judgment

Plaintiff asks this Court to issue a declaratory judgment, as follows:

1. That section 6036 of the DRA does not affect the provision of section 1902(e)(4) of the Act, which requires that children born to mothers eligible for and receiving Medicaid coverage at delivery are deemed to be themselves eligible for Medicaid beginning at birth and one year thereafter if they are members of their mothers' households and their mothers remain Medicaid eligible.

2. That the requirement of section 1902(e)(4) of the Act that the mother remain eligible for Medicaid is satisfied if the mother remains eligible for Medicaid coverage for emergency medical conditions as specified in section 1902(v)(2) of the Act.

3. In the alternative, that, to the extent section 6036 of the DRA does modify section 1902(e)(4) of the Act to require that newborn citizens not be deemed automatically eligible for Medicaid but must first submit an application and proof of citizenship, section 6036 of the DRA denies newborn citizens the equal protection of the law, contrary to the Fifth Amendment.

4. In the alternative, that, to the extent section 6036 of the DRA does modify section 1902(e)(4) of the Act to require that newborn citizens not be deemed automatically eligible for Medicaid but must first submit an application and proof of citizenship, Defendant cannot deny Plaintiff federal financial participation for providing automatic Medicaid eligibility to such newborn citizens because Congress has not unambiguously placed such a

1 condition on receipt of federal funds under its authority in Article I, Section 8 of the
2 Constitution.

3 5. In the alternative, that, to the extent section 6036 of the DRA does modify
4 section 1902(e)(4) of the Act to require that newborn citizens not be deemed automatically
5 eligible for Medicaid but must first submit an application and proof of citizenship, Defendant
6 cannot deny Plaintiff federal financial participation for providing automatic Medicaid
7 eligibility to such newborn citizens because it requires Plaintiff to violate the equal protection
8 rights of such newborn citizens which are in excess of Congress' authority under Article I,
9 Section 8 of the Constitution.
10

11 **B. Injunction**

12 Plaintiff further asks the Court to issue a preliminary and permanent injunction
13 prohibiting Defendant from denying federal participation under the Act to Plaintiff for
14 providing automatic Medicaid eligibility to newborn citizens of non-qualifying aliens pursuant
15 to section 1902(e)(4) of the Act.
16

17 DATED this 5th day of March, 2007.

18 ROBERT M. MCKENNA
19 Attorney General

20
21 _____
22 WILLIAM L. WILLIAMS, WSBA No. 6474
23 Senior Assistant Attorney General
24 CATHERINE R. HOOVER, WSBA No. 22049
25 Assistant Attorney General
26 Attorneys for Plaintiff

PROOF OF SERVICE

I certify that I served a copy of this document on all parties or their counsel of record on the date below as follows:

☐ US Mail Postage Prepaid via Consolidated Mail Service

☐ ABC/Legal Messenger

☐ State Campus Delivery

☐ Hand delivered by _____

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 5th day of March, 2007, at Tumwater, WA.

Judith A. Halla, Legal Assistant